A

Lean Shing Pek v Anang bin Basang & Ors

B

HIGH COURT (SANDAKAN) — SUIT NO S22–68 OF 2009
LEE HENG CHEONG JC
4 MARCH 2012

C

Contract — Sale and purchase of land — Breach — Specific performance — Plaintiff purchasing lands from administrators of deceased landowners — Whether sale and purchase agreement ('SPA') valid — Lands yet to be alienated as at the date of SPA — Appointment of administrator order yet to be issued as at the date of SPA — Whether sellers lacked necessary legal capacities to sign SPA — Whether no rights capable of being subject matter of contract — Whether SPA invalid and unenforceable

D

Land Law — Indefeasibility of title and interests — Transfer of land — Plaintiff purchasing lands from defendants under sale and purchase agreement ('SPA') — Defendants subsequently selling the lands to a third party — Lands registered in name of third party — Whether SPA could defeat registered interest of third party

E

Land Law — Sale of land — Bare trust — Sale and purchase of land — Plaintiff yet to pay full purchase price — Plaintiff not having any beneficial interest in subject lands — Whether sellers holding land as bare trustees for plaintiff

F

Land Law — Sale of land — Beneficial ownership — Purchaser yet to pay full purchase price to sellers — Whether purchaser having any beneficial interest in subject lands

G

Land Law — Sale of land — Validity of agreement — Plaintiff purchasing lands from administrators of deceased landowners — Whether sale and purchase agreement ('SPA') valid — Lands yet to be alienated as at the date of SPA — Appointment of administrator order yet to be issued as at the date of SPA — Whether sellers lacked necessary legal capacities to sign SPA — Whether no rights capable of being subject matter of contract — Whether SPA invalid and unenforceable

H

I

Tort — Inducement of breach of contract — Interference with contractual relations — Sale of land — Plaintiff purchasing lands from defendants under sale and purchase agreement (SPA) — Defendants subsequently selling lands to third party

— Lands registered in name of third party — Whether third party induced defendants to breach the SPA — Whether SPA found to be null and void — Whether proven inducement by third party

Trust and Trustees — Land — Sale of land — Bare trust — Whether plaintiff yet to pay full purchase price — Whether plaintiff not having any beneficial interest in subject lands — Whether sellers holding land as bare trustees for plaintiff

The plaintiff's claim against the first to 41st defendants ('the defendants') was that the defendants were the registered landowners and/or administrators of the deceased landowners who had sold their lands ('the subject lands') to him by virtue of the sale and purchase agreements signed between the plaintiff and the defendants ('the agreements'). The plaintiff claimed specific performance of the agreements. As against the 42nd and 43rd defendants, the plaintiff claimed that the subject lands which were sold and transferred into the name of the 42nd defendant was null and void by reason of the agreements signed between the defendants and him and that the sublease to the 43rd defendant, be set aside. The plaintiff further claimed that the 42nd and 43rd defendants had induced the first to 41st defendants to breach the agreements with the plaintiff. The plaintiff's claim was denied by the defendants. The subject lands had been transferred and registered in the name of the 42nd defendant and had been sub-leased to the 43rd defendant by the 42nd defendant. The following issues arose for consideration: (i) Whether the defendants were the registered landowners and/or lawful administrators of the deceased landowners of the subject lands at the time the agreements were executed?; (ii) Whether there were valid agreements for the sale of the subject lands to the plaintiff by the defendants?; (iii) Whether the 42nd and 43rd defendants had induced the defendants to breach their agreements with the plaintiff?; (iv) Can the agreements between the plaintiff and the defendants defeat the registered interest of the 42nd defendant as the lawful and registered owner of the subject lands?; and (v) Whether the defendants were bare trustees of the subject lands for the plaintiff?.

Held, dismissing the plaintiff's claim with costs:

(1) When the agreements were executed in November, 2003, the lands were yet to be alienated. For those landowners who had passed away, the appointment of administrator order was issued in the year 2004 and the subject lands were transferred to the respective beneficiaries in the year 2004. Hence, the signatories to the said agreements between the plaintiff and the defendants lacked the necessary legal capacities to sign those agreements coupled with the fact that the alleged administrator/administratrix and landowners who signed the agreements with the plaintiff, did not have any legal interest in the subject lands which was capable of being the subject matter of a contract at that

material time in 2003. There were no valid and enforceable agreements between the plaintiff and the defendants for the purchase of the subject lands (see para 7(c)–(g)); *Amaravathy d/o Nadeson & Anor (both as administratixes of the estate of Ayaduray Sugirtha Lingam, deceased) v Sivapragasam Nagamany (as executor of the estate of K Nagasamy Nee Sugirtha Letchumy d/o Ayadurai* [2007] 4 MLJ 319 (CA) followed.

(2) The plaintiff did not pay the full purchase price for the subject lands, the plaintiff did not have any beneficial interest in the subject lands and there was thus no interest capable of being the subject of a contract (see para 8(v)); *Chua Hee Hung & Ors v QBE Supreme Insurance Bhd* [1990] 1 MLJ 480 followed.

(3) The agreements between the defendants and the plaintiff were null and void as there was no rights capable of being the subject matter of a contract in the absence of an approval from the Lands and Surveys Department that the lands had been approved at the time the alleged agreements were executed (see para 8(w)); *Shariff Basa SH Bakir v Shariff Yunus SH Bakir & 2 Ors* (Suit No S22–49 of 2008); *Egin @ Laiwin bin Mahir & 481 Ors v Corak Nahkoda Sdn Bhd & 4 Ors* (unreported — Suit No-S 22–63 of 2009).

(4) Since there were no valid agreements between the defendants and the plaintiff then it followed that there was no issue as to whether the 42nd and 43rd defendants induced the defendants to breach the agreements with the plaintiff. In any event, the plaintiff had failed to prove that the 42nd and 43rd defendants had induced the defendants to breach the agreements with the plaintiff (see para 9(b)).

(5) The plaintiff's interests in the subject lands were not registered and the subject lands had been transferred and registered into the name of the 42nd defendant. Hence, the agreements between the plaintiff and the defendants, could not defeat the registered interest of the 42nd defendant who was the lawful and registered owner of the subject lands (see para 10(a) (b)).

(6) The first to 41st defendants were not bare trustees of the subject lands for the plaintiff as, inter alia, the plaintiff failed to pay the full purchase price of the subject lands (see para 11(a)); *Chua Hee Hung & Ors v QBE Supreme Insurance Bhd* [1990] 1 MLJ 480 referred; *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 MLJ 12 referred.

[Bahasa Malaysia summary

Tuntutan plaintif terhadap defendan-defendan pertama hingga ke-41 ('defendan-defendan') adalah bahawa defendan-defendan merupakan pemilik-pemilik berdaftar tanah dan/atau pentadbir-pentadbir pemilik-pemilik tanah yang sudah meninggal dunia yang telah menjual

tanah-tanah mereka ('tanah-tanah tersebut') kepadanya melalui perjanjian-perjanjian jual beli yang dimeterai antara plaintif dan defendan-defendan ('perjanjian-perjanjian tersebut'). Plaintif menuntut pelaksanaan spesifik bagi perjanjian-perjanjian tersebut. Terhadap defendan-defendan ke-42 dan ke-43, plaintif mendakwa bahawa tanah-tanah tersebut yang telah dijual dan dipindah milik di bawah nama defendan ke-42 adalah batal dan tidak sah kerana perjanjian-perjanjian dimeterai antara defendan-defendan dengannya dan pajakan kecil kepada defendan ke-43, diketepikan. Plaintif seterusnya mendakwa bahawa defendan-defendan ke-42 dan ke-43 telah mendorong defendan-defendan pertama hingga ke-41 agar melanggar perjanjian mereka dengan plaintif. Tuntutan plaintif dinafikan oleh defendan-defendan. Tanah-tanah tersebut telah dipindahkan dan didaftarkan di bawah nama defendan ke-42 dan telah dipajakkan kepada defendan ke-43 oleh defendan ke-42. Isu-isu yang timbul untuk pertimbangan adalah: (i) sama ada defendan-defendan merupakan pemilik-pemilik tanah berdaftar dan/atau pentadbir-pentadbir pemilik-pemilik tanah-tanah tersebut, yang sudah meninggal dunia, ketika perjanjian-perjanjian telah dimeterai; (ii) sama ada terdapat perjanjian-perjanjian jual beli tanah-tanah tersebut yang sah kepada plaintif oleh defendan-defendan; (iii) sama ada defendan-defendan ke-42 dan ke-43 telah mendorong defendan-defendan untuk melanggar perjanjian mereka dengan plaintif; (iv) bolehkah perjanjian antara plaintif dan defendan-defendan mengalahkan kepentingan berdaftar defendan ke-42 sebagai pemilik sah dan berdaftar tanah-tanah tersebut; dan (v) sama ada defendan-defendan merupakan pemegang-pemegang amanah bagi tanah-tanah tersebut untuk plaintif.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Semasa perjanjian-perjanjian dimeterai pada bulan November 2003, tanah-tanah tersebut belum diberi milik. Bagi pemilik-pemilik tanah yang sudah meninggal dunia, perintah perlantikan pentadbir telah dikeluarkan pada tahun 2004 dan tanah-tanah tersebut dipindahkan kepada waris-waris masing-masing pada tahun 2004. Oleh itu, penandatangan-penandatangan perjanjian-perjanjian antara plaintif dan defendan-defendan tidak mempunyai kapasiti undang-undang yang diperlukan untuk menandatangani perjanjian-perjanjian tersebut ditambah lagi dengan fakta bahawa pentadbir-pentadbir dan pemilik-pemilik tanah yang didakwa menandatangani perjanjian-perjanjian dengan plaintif, tidak mempunyai apa-apa kepentingan undang-undang dalam tanah-tanah tersebut yang boleh menjadi hal perkara kontrak ketika itu, pada tahun 2003. Tiada perjanjian yang sah dan boleh dikuatkuasakan antara plaintif dan defendan-defendan bagi pembelian tanah-tanah tersebut; *Amaravathy d/o Nadeson & Anor (both as administratixes of the estate of Ayaduray Sugirtha Lingam, deceased) v Sivapragasam Nagamany (as executor of the*

estate of K Nagasamy Nee Sugirtha Letchumy d/o Ayadurai [2007] 4 MLJ 319 (CA) dirujuk (lihat perenggan 7(c)–(g)).

(2) Plaintif tidak membayar harga penuh bagi tanah-tanah tersebut, plaintif tidak mempunyai sebarang kepentingan benefisial dalam tanah-tanah tersebut dan dengan itu, tidak mempunyai kepentingan untuk menjadi hal perkara kontrak (lihat perenggan 8(v)); *Chua Hee Hung & Ors v QBE Supreme Insurance Bhd* [1990] 1 MLJ 480 diikut.

(3) Perjanjian-perjanjian antara defendan-defendan dan plaintif adalah batal dan tidak sah kerana tiada hak-hak yang boleh menjadi hal perkara kontrak tanpa kelulusan daripada Jabatan Tanah dan Ukur bahawa tanah-tanah telah diluluskan ketika perjanjian tersebut didakwa telah dimeterai (lihat perenggan 8(w)); *Shariff Basa SH Bakir v Shariff Yunus SH Bakir & 2 Ors* (Saman No S22–49 Tahun 2008); *Egin @ Laiwin Bin Mahir & 481 Ors v Corak Nahkoda Sdn Bhd & 4 Ors* (unreported — Suit No-S 22–63 of 2009).

(4) Oleh kerana tiada perjanjian yang sah antara defendan-defendan dan plaintif, maka tidak timbul isu sama ada defendan-defendan ke-42 dan ke-43 telah mendorong defendan-defendan untuk melanggari perjanjian mereka dengan plaintif. Dalam apa jua keadaan, plaintif telah gagal untuk membuktikan bahawa defendan-defendan ke-42 dan ke-43 telah mendorong defendan-defendan untuk melanggari perjanjian mereka dengan plaintif (lihat perenggan 9(b)).

(5) Kepentingan-kepentingan plaintif ke atas tanah-tanah tersebut tidak didaftarkan dan tanah-tanah tersebut telah dipindah milik dan didaftarkan di bawah nama defendan ke-42. Oleh itu, perjanjian-perjanjian antara plaintif dan defendan-defendan, tidak dapat mengalahkan kepentingan berdaftar defendan ke-42 yang merupakan pemilik sah dan berdaftar tanah-tanah tersebut (lihat perenggan 10(a)(b)).

(6) Defendan-defendan pertama hingga ke-41 bukanlah pemegang-pemegang amanah bagi tanah-tanah tersebut bagi plaintif kerana plaintif, antara lain, telah gagal untuk membayar harga belian penuh bagi tanah-tanah tersebut (lihat perenggan 11(a)); *Chua Hee Hung & Ors v QBE Supreme Insurance Bhd* [1990] 1 MLJ 480 diikut; *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 MLJ 12 dirujuk.]

Notes

For a case on transfer of land see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 3591.

For cases on bare trust, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 4628–4631.

For cases on beneficial ownership see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 4632–4643.

For cases on breach, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5695–5710.

For cases on interference with contractual relations, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 808–810.

For cases on sale, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2751–2755.

For cases on validity of agreement, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 5182–5191.

Cases referred to

Amaravathy d/o Nadeson & Anor (both as administratixes of the estate of Ayaduray Sugirtha Lingam, deceased) v Sivapragasam Nagamany (as executor of the estate of K Nagasamy Nee Sugirtha Letchumy d/o Ayadurai [2007] 4 MLJ 319, CA (folld)

Besharapan Sdn Bhd & Ors v Agroco Plantation Sdn Bhd & Anor [2007] 1 MLJ 101; [2006] 4 CLJ 878, CA (refd)

Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd [1996] 2 MLJ 12; [1996] 2 CLJ 561, FC (refd)

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188; [1997] 4 CLJ 393, FC (refd)

Chua Hee Hung & Ors v QBE Supreme Insurance Bhd [1990] 1 MLJ 480; [1990] 1 CLJ (Rep) 49, SC (folld)

Egin @ Laiwin bin Mahir & 481 Ors v Corak Nahkoda Sdn Bhd & 4 Ors [2009] MLJU 1448; (unreported — Suit No S22–63 of 2009), HC (refd)

Hj Lassim Abdul Rahim v Su Wee Lip @ Philip Su (Civil Suit K 22–08 of 2004), HC (unreported) (refd)

Ng Thau Shing v George Justine & Ors [2005] 6 CLJ 80, HC (folld)

RHB Bank Berhad v Dominance Timber Industries Sdn Bhd & Ors [2008] MLJU 846; [2009] 7 CLJ 654, HC (folld)

Shariff Basa SH Bakir v Shariff Yunus SH Bakir & 2 Ors (Suit No S22–49 of 2008) (refd)

Legislation referred to

Evidence Act 1950 s 67
Sabah Land Ordinance s 88

Wong Shang Len (Tan Pang Shen & Co) for the plaintiff.
Abdul Razak (Razak Associates) for the first to 41st defendants.
Francis Wong (William Liaw Chen & Company) for the 42nd and 43rd defendants.

Lee Heng Cheong JC:

BACKGROUND

[1] The plaintiff's claim against the first–41st defendants is that the first–41st defendants were the registered landowners and/or administrator of the deceased landowners who have sold their lands ('the subject lands') to him by virtue of the sale and purchase agreements signed between the plaintiff and the first–41st defendants ('the said agreements'). The plaintiff claimed specific performance of the said agreements.

[2] As against the 42nd–43rd defendants, the plaintiff claimed that the subject lands which were sold and transferred into the name of the 42nd defendant was null and void by reason of the said agreements signed between the first–41st defendants and him and that the sublease to the 43rd defendant, be set aside. The plaintiff further claimed that the 42nd–43rd defendants had induced the first–41st defendants to breach the said agreements with the plaintiff.

[3] The plaintiff's claim was denied by the first–41st defendants as well as the 42nd–43rd defendants. The 42nd defendant's defence was that she had bought the subject lands by virtue of a sale and purchase agreement dated 17 January 2008 with one Abdul Samad bin Battua.

UNDISPUTED FACTS

[4] The subject lands in the plaintiff's claim herein have been transferred and registered in the name of the 42nd defendant. The subject lands were sold by one Abdul Samad bin Battua to the 42nd defendant by virtue of an agreement dated 17 January 2008.

[5] The plaintiff was never in occupation and/or possession of the subject lands and the subject lands have been sub-leased to the 43rd defendant by the 42nd defendant.

THE ISSUES ARISING

[6] There was no agreed issues for trial and based on the pleadings and the submissions of the parties, I find that the following issues are pertinent, namely:

(a) whether the first–41st defendants are the registered landowners and/or

lawful administrators of the deceased landowners of the subject lands at the time the agreements were executed? A

(b) whether there were valid agreements for the sale of the subject lands to the plaintiff by the first–41st defendants?

(c) whether the 42nd–43rd defendants had induced the first–41st defendants to breach their agreements with the plaintiff? B

(d) can the said agreements between the plaintiff and the first–41st defendants defeat the registered interest of the 42nd defendant as the lawful and registered owner of the subject lands? and C

(e) whether the first–41st defendants are bare trustees of the subject lands for the plaintiff?.

D

CONSIDERATION OF THE ISSUES ARISING

[7] Whether the first–41st defendants are the registered landowners and/or lawful administrators of the deceased landowners of the subject lands at the time the said agreements were executed. E

(a) I noted that there are some registered landowners and/or lawful administrators and beneficiaries of the subject lands, are not parties to this action and neither did they enter into any agreements with the plaintiff for the sale of the subject lands; F

(b) PW4 during his testimony at Q591–Q755 of the notes of proceeding confirmed that these registered landowners and/or lawful administrators and beneficiaries are not parties to this action and neither were there any agreements between them and the plaintiff; G

(c) I further noted that when the said agreements were executed in November 2003, the lands were yet to be alienated. For those landowners who had passed away, the *perintah perlantikan pentadbir* or appointment of administrator order was issued in the year 2004 and the subject lands were transferred to the respective beneficiaries in the year 2004; H

(d) in his testimony, the plaintiff admitted that he was dealing with the *ketua kampung* in the purchase of the subject lands and not the landowners (refer to Q419 of the NOP) so he did not know who the landowners were and depended on third parties (refer to Q414–416 of the NOP). Furthermore, even PW4 himself confirmed that all land titles issued to the PT numbers mentioned in items 230–244 of PBD3 are not granted to the persons named in those agreements with the plaintiff; I

(e) thus I hold that the plaintiff had failed to prove that the first–41st

defendants are the registered landowners and/or lawful administrators of the deceased landowners of the subject lands when the said agreements were executed;

(f) I find that it was also on record that these legally appointed administrator/administratrix and legal beneficiaries of the subject lands did not sign any agreements with the plaintiff nor were they parties to this suit. Furthermore, the evidence also showed clearly that the said agreements with the plaintiff were signed in the year 2003 but the appointment of the legal administrators/administratrix was in the year 2004–2005 the legal beneficiaries were named;

(g) thus I find that these signatories to the said agreements between the plaintiff and the first–41st defendants lacked the necessary legal capacities to sign those agreements coupled with the fact that the alleged administrator/administratrix and landowners who signed the agreements with the plaintiff, did not have any legal interest in the subject lands which was capable of being the subject matter of a contract at that material time in 2003;

(h) I find support in the case of *Amaravathy d/o Nadeson & Anor (both as administratixes of the estate of Ayaduray Sugirtha Lingam, deceased) v Sivapragasam Nagamany (as executor of the estate of K Nagasamy Nee Sugirtha Letchumy d/o Ayadurai* [2007] 4 MLJ 319 (CA), where the Court of Appeal referred to the Federal Court case of *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188; [1997] 4 CLJ 393. In that case the question that arose was whether the beneficiaries of the estate of a person who had died intestate could in law, before the estate of the deceased was administered and distributed, have any interest or property in the estate. The Federal Court said at p 402e:

> *It is our conclusion that in law a beneficiary under intestacy has no interest or property in the personal estate of a deceased person until the administration of the tatter's estate is complete and distribution made according to the law ofdistribution of the intestate estate.*
>
> Therefore (p 404 b–c) the beneficiaries had no title to lands belonging to the estate and could not enter, as they did, into agreements to sell the lands. What the decision amounts to is that a beneficiary of the estate of a person who died intestate has no title to any property forming, or forming part of, the estate until it actually becomes his after and as a result of the administration and distribution of the estate, and cannot dispose of the property. He cannot dispose of what is not yet his.
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> (Emphasis added.)

(i) thus I find that those agreements in respect of the subject lands which were entered into by those who signed as executor or administrator in 2003 do not have the legal capacity to enter into the contract and as such

all the agreements are null and void. For those who signed the said agreements as landowners, I find that at the time of signing, there was no subject matter capable of being a subject of a contract.

[8] *Whether there were valid agreements for the sale of the subject lands to the plaintiff by the first–41st defendants.*

(a) I find that there were no valid and enforceable agreements between the plaintiff and the first–41st defendants for the purchase of the subject lands for the following reasons:

(i) at the time the said agreements were signed, the defendants concerned did not have the necessary legal capacity to do so because they were either only appointed as administrators or administratrix in the year 2004 and the said agreements were signed in the year 2003 or they were not the appointed administrators or administratrix of the land applicants;

(ii) the landowners and/or lawful beneficiaries are not parties to this action nor did they sign the said agreements for the sale of the subject lands to the plaintiff;

(iii) the relevant powers of attorney pertaining to the subject lands were not registered with the central land office and as such they are invalid and ineffectual; and

(iv) there was a failure and/or omission on the part of the plaintiff, to pay the full purchase price and hence he did not acquire any interest in the land and the said agreements are conditional agreements.

(b) the plaintiff contended that there were valid agreements between him and the first–41st defendants. In support of this contention, the relevant sale and purchase agreements were produced as evidence;

(c) PW1 was also called as a witness to testify that he was a witness to the signatories of the said agreements. PW1 testified that he went on one trip to Kg Keindanagan to attest the signatures of the first–41st defendants in the sale and purchase agreements and power of attorneys and that he spent two nights there. This was the only time he met with the first–41st defendants;

(d) PW3 then testified that PW1 was with him when they went to Kg Keindangan and all the first– 41st defendants signed the said agreements before PW1. During cross-examination, PW3 testified when D1 was signed, PW1 was with him. When asked whether that was the only trip, his answer was a 'yes';

(e) PW4 testified that she had made payment of a 'loan' and 'advance' to the first–41st defendants before they signed the said agreements as instructed

by the plaintiff. She testified in cross-examination that the payments were made two or three months before the defendants signed the said agreements. PW4 also testified that the agreements were signed by the first–41st defendants between July–October/November 2003. It was only in October/November 2003 that all the said agreements were completely signed;

(f) I agree with the defendant's contention that if what PW4 testified is true, then what PW1 testified is false because the first–41st defendants could not have signed before PW1 as the said agreements were allegedly signed between July–October/November 2003. PW1 could not therefore have witnessed the execution of all the said agreements by the first–41st defendants, bearing in mind that PW1, only went to Kg Keindanagan once;

(g) I do not place much weight on the testimony of PW1 as, inter alia, in his witness statement, PW1 stated that he attested the documents in Question 2. In cross-examination he testified otherwise, that is, he only attested the sale and purchase agreements and powers of attorney. I further noted that PW1 had also attested the letters and statutory declarations as stated in Q2 of his witness statement which contradicted what he testified earlier that he only attested the sale and purchase agreements and powers of attorney of the first–41st defendants;

(h) I further noted that PW1 was cross-examined as to whether he was aware whether the names and particulars of the signatories were stated in the documents he attested and he answered that he was not aware. If PW4 did explain the contents of the said agreements and witnessed the signing by the first–41st defendants, as he contended, surely PW4 would know whether the particulars of the first–41st defendants, were already typed in the said agreements;

(i) PW1 testified that he attested the first–41st defendants' signatures in the sale and purchase agreements and powers of attorneys but the evidence showed that the said agreements at pp 1006–1014 of the PBD3 were attested by an advocate, Mr Edwin Tsen, who did not give evidence at all whether he did or did not attest, during the trial. Nor was there was explanation why Mr Edwin Tsen was not called to give evidence;

(j) based on the evidence adduced in the trial, I find that the plaintiff has failed to prove on a balance of probabilities that PW1 attested the signatures as contended although PWTs signatures and rubber stamps may appear in the relevant documents;

(k) I find that the plaintiff apart from relying on PW1's testimony, did not adduce any further evidence on the signatures of the first–41st defendants. I find that the law on signatures had been clearly laid down

by His Lordship Dr Hj Hamid Sultan bin Abu Backer in *RHB Bank Berhad v Dominance Timber Industries Sdn Bhd & Ors* [2008] MLJU 846; [2009] 7 CLJ 654 where he said:

> Law relating to signatures
>
> (1) Section 67 of the Evidence Act 1950 states as follows:
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> If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting shall be proved to be in his handwriting. *Under this section there is a requirement not only to prove the existence of the document but also to prove the signature and or handwriting of the person concerned. Thus, a party who exhibits a document must also prove that the document was written or signed by the concerned person. Sections 67–73 deal* with the mode of the proof of the execution of documents. If a document is alleged to be signed or written by any person, then the document must also be proved to be in his handwriting. Thus, producing a document by itself does not dispense with the need to prove the executant. The handwriting of a person may be proved in the following ways: (a) by the evidence of the writer himself (see ss 60 and 67); (b) by the evidence of another person who has seen him writing the document (see ss 60 and 68); (c) by the evidence of a person who is acquainted with the handwriting of a person by whom the writing in question is supposed to have been written and signed (s 47); (d) 5 by the evidence of handwriting expert (s 45); (e) comparison by the court, of the writing or signature in question with any others proved to the satisfaction of the court to be genuine (see s 73); (f) the court may direct the person who is alleged to have written the document to write any word or figure to enable the court to compare.
>
> (2) *Section 68 sets out the principle relating to proof of execution of a document which is required by law to be attested. The word 'attested' is not defined in the Act. 'Attested' means that a person has signed the document by way of testimony to the fact that he saw it executed. Under this provision when a document is required by law to be attested, then at least one attesting witness must be called to prove the execution of the document before the document is made admissible. If no attesting witness is available s 69 will apply.* Attestation of a document in some cases is mere formality and not a requirement of law. However, in some cases it is mandatory. The object of attestation is only to afford proof of the genuineness of the document. This section is only applicable when documents need to be attested by law. Even when secondary evidence of a document is given, an attesting witness must be called.
>
> (Emphasis added.)

(l) thus applying the principle in the above case, I find that there was no credible evidence at all of the execution of the said agreements by the first–41st defendants;

(m) I also find that the plaintiff did not adduce any evidence that the subject lands had been alienated to nor any approval from the Lands and Surveys Department that the subject lands had been approved to the first–41st defendants at the time when the said agreements were signed by the first–41st defendants;

(n) I noted that even in the preamble and/or in the said agreements between the first–41st defendants and the plaintiff, there was nothing in the said agreements, to state that there were any approval from the Lands and Surveys Department nor any approval reference was stated;

(o) I also find that there was also no evidence at all that the first–41st defendants had made any application to the Lands and Surveys Department for the subject lands. The actual landowners are those named in the land titles at pp 1–248 of the PBD1. The evidence adduced showed that the applicants for the lands are not all the first–41st defendants;

(p) I am guided by what His Lordship Richard Malanjum J (as he then was) in the case of *Ng Thau Shing v George Justine & Ors* [2005] 6 CLJ 80 held:

> Foremost to note is the distinction between land approval and the issued document of title. Subject to payment of all fees due and the fulfillment of such other conditions as stipulated upon approval of a land application it is my view that a land approval only creates a contractual relationship between an alienating authority and a successful land applicant. In the case of *Tee Say Poh v Jais bin Haji Salleh* [1939] MLJ 330 Mills J expressed a similar view at p 332:
>
> > Moreover, I am in grave doubt whether the English rule of equity applies in the present case, for it only applies to contracts for sale of land, whereas the land now in question is State land and Yas, *in obtaining approval to occupy, obtained not land but only contractual rights against the state.*
> >
> > And in *Chong Pak Kwan @ Chong Shiu Fai v Kong Chung Loi (a), Kong Sung Loi & Others* [2002] MLJU 435 I did express the same opinion when I said thus:
> >
> > > I think it is quite a settled law that contractual rights can be created Involving approved land application …
> >
> > *Hence I would say that an approval must have been obtained at that point in time.* Since the land applications were approved there should therefore be rights conferred at the material time capable of being a subject matter of a contract.
> >
> > (Emphasis added.)

(q) further in the case of *Hj Lassim Abdul Rahim v Su Wee Lip @ Philip Su* (Civil Suit K 22–08 of 2004) — unreported, Datuk Ian Chin J held:

> *What the plaintiff had purchased from the natives were the right to be eventually issued the titles to the land which they had been approved and to have the titles transferred to him. Such a right is capable of being sold* (see *Halimah bt Abdul Rahman v Fatimah bt Abdulla* [1976] 2 MLJ 64; *Sinniah a/l Pampayan v MuthuveluPillai a/l PalanichamyPillai* [1997] 1 MLJ 403; *Mahni v Ali & Anor* [1965] 31 MLJ 234; *Malaya Borneo Building Society Ltd v M Ramachandran* [1959] 25 MLJ 182; Unreported case of *Chong Pak Kwan @ Chong Shiu Fai v Kong Chung Loi @ Kong Sung Loi & 2 Ors,* Sandakan High Court; Suit No S22–15 of 1996,29 August 2002).
>
> (Emphasis added.)

(r) in the Court of Appeal's case of *Besharapan Sdn Bhd & Ors v Agroco Plantation Sdn Bhd & Anor* [2007] 1 MLJ 101; [2006] 4 CLJ 878 which dealt with s 88 of the Sabah Land Ordinance, the court held:

> Even though the second and third appellants did not have any registered right or interest in the subject land on the date of execution of the 1989 agreement, that did not render the agreement which was otherwise valid and enforceable, to be void or invalid. The second and third appellants at the material time had sufficient interest in the subject land to enter into a binding agreement, by which they agreed to transfer the subject land when the title or interest in the subject land had been registered in their names. In other words, the parties agreed that the agreement would only become enforceable the moment the second and third appellants is right or interest in the subject land was registered under the Ordinance. There was no difficulty with such arrangement and, thus, there was no merit in the first ground canvassed by the appellants.
>
> (Emphasis added.)

(s) I have held in the case of *Egin @ Laiwin bin Mahir & 481 Ors v Corak Nahkoda Sdn Bhd & 4 Ors* (unreported — Suit No S22–63 of 2009) that a land application does not confers any rights in the land to the land applicant. I also held in the unreported case of *Shariff Basa SH Bakir v Shariff Yunus SH Bakir & 2 Ors* (Suit No S22–49 of 2008) that when the land had been approved, the rights in the land is capable of being a subject matter of a contract;

(t) in our present case, since there was no evidence of a approval by the Lands and Surveys Department, there is thus no rights capable of being a subject matter of a contract;

(u) I noted that PW2 had also testified that by the said agreements what he wanted to purchase was the land and not the land application and neither was it the right to be sold the land only upon the title to the lands are issued. I agree with the contention of the 42nd–43rd defendants that the agreements, are not conditional agreements, that is, it is not conditional

upon the titles of the lands being issued but a pure and straight forward sale of the subject lands, when in fact the subject lands have yet to be alienated;

(v) further I find that the plaintiff did not pay the full purchase price for the subject lands, the plaintiff did not have any beneficial interest in the subject lands and there is thus no interest capable of being the subject of a contract. In the case of *Chua Hee Hung & Ors v QBE Supreme Insurance Berhad* [1990] 1 MLJ 480; [1990] 1 CLJ (Rep) 49, the Supreme Court held that only upon full payment of the purchase price, will the buyer would obtain any beneficial interest in the property; and

(w) in the premises I find that the said agreements between the first to 41st defendants with the plaintiff, are null and void as there was no rights capable of being the subject matter of a contract in the absence of an approval from the Lands and Surveys Department that the lands had been approved at the time the alleged agreements were executed. This is in line with my decisions in the unreported cases of *Shariff Basa SH Bakir v Shariff Yunus SH Bakir & 2 Ors* (Suit No S22–49 of 2008) and *Egin @ Laiwin bin Mahir & 481 Ors v Corak Nahkoda Sdn Bhd & 4 Ors* [2009] MLJU 1448; (unreported — Suit No S22–63 of 2009).

[9] Whether the 42nd–43rd defendants had induced the first–41st defendants to breach their agreements with the plaintiff.

(a) I noted that it is not disputed that the 42nd defendant had bought the subject lands by virtue of a sale and purchase agreement dated 17 January 2008 with one Abdul Samad bin Battua;

(b) since I find that there were no valid agreements between the–41st defendants and the plaintiff then it follows that there is no issue as to whether the 42nd–43rd defendants induced the first–41st defendants to breach the said agreements with the plaintiff; and

(c) in any event, I find that the plaintiff has failed to prove that the 42nd–43rd defendants have induced the first–41st defendants to breach the said agreements with the plaintiff.

[10] Whether the said agreements between the plaintiff and the first–41st defendants, can defeat the registered interest of the 42nd defendant as the lawful and registered owner of the subject lands?

(a) I find that it is not disputed that the interests of the plaintiff in the subject lands are not registered and that the subject lands had been transferred and registered into the name of the 42nd defendant. I had considered the same issue in the case of *Shariff Basa SH Bakir v Shariff Yunus SH Bakir & 2 Ors* (Suit No S22–49 of 2008) where I held as follows:

Having perused the relevant facts and circumstances of this case, I find that there is only one issue for this court to consider that is whether the interest of the plaintiff over the said Land overrides the registered interest of the third defendant as the registered proprietor of the said land which is the subject matter of this case.

I hold that the issuance of the title of the said land, the sale and transfer of the said Land from the first defendant to the second and finally from the second defendant to the third defendants has the legal effect of overriding the unregistered interests of the plaintiff.

(b) in the premises I find that the said agreements between the plaintiff and the first–41st defendants, cannot defeat the registered interest of the 42nd defendant who is the lawful and registered owner of the subject lands.

[11] Whether the first–41st defendants are bare trustees of the subject lands for the plaintiff?

(a) I find that the first–41st defendants are not bare trustees of the subject lands for the plaintiff as inter alia the plaintiff failed to pay the full purchase price of the subject lands;

(b) I am guided by the Supreme Court case of *Chua Hee Hung & Ors v QBE Supreme Insurance Berhad* [1996] 1 MLJ 480; [1990] 1 CLJ (Rep) 49 where the court held, 'inter alia', that only upon full purchase price had been paid by the buyer to the seller, will the buyer obtain a beneficial interest in the property;

(c) in the Federal Court case of *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 MLJ 12; [1996] 2 CLJ 561, the Federal Court, inter alia, held 'upon full payment of the purchase price … the owner become the bare trustee for the purchaser'; and

(d) I have noted that the plaintiff had admitted in evidence that the full purchase price shall be paid upon the transfer of the lands to him. It was also provided in the said agreements at cl 7 and from the facts, no transfers of the subject lands were ever effected thus there were no full payment of the purchase price.

ENCLOSURE 88

[12] The plaintiff applied to amend their statement of claim after the close of their case and after the defendant closed their case. After considering the encl 88 and the submissions of all parties, I decided to dismiss encl 88 with costs as I find that the proposed amendment of the plaintiff is mala fide and

prejudicial to the defendants.

ORDER

[13] In the light of the above, I find that the plaintiff has failed to prove its case against the first–41st defendants and the 42nd–43rd defendants. In the premises, I dismiss the plaintiff's claim with costs.

Plaintiff's claim dismissed with costs.

Reported by Kanesh Sundram